

## REMARKS

Claims 1 and 3-23, as amended, are pending for the Examiner's review and consideration. Claims 1 and 14 have been amended to recite the feature of claim 6, wherein the filling comprises a blend of chocolate and non-lauric vegetable fat. Claim 4 has been amended to recite a preferred embodiment of lower water content where the filling has less than 5% water content (*See, e.g.*, Specification at page 3, line 15). Claim 5 has been amended to recite a preferred amount of the vegetable fat now recited in claim 1, which feature already existed in claim 5. Claim 6 has been amended to recite that the filling includes certain vegetable fats, all of which were already present in claim 5. Claim 10 has been amended to recite only that the filling is deposited into the shaped sugar wafer. Claim 11 is amended to correct an antecedent basis issue for the "cone." Thus, none of these amendments is believed to present a new issue or introduce new matter, as each is believed to have been discussed in one or more previous Amendments or present in other pending claims. These amendments are intended to reduce the issues for appeal and/or expedite issuance of this application, such that entry of the claims is warranted at this time.

In support of the patentability of the present claims, Applicants attach hereto the Declaration of Claudia Conti Under 37 C.F.R. § 1.132 ("Couzens Declaration").

Claims 22-23 are rejected under 35 U.S.C. § 112, first paragraph, for the reason on page 2 of the Office Action. The previous Office Action mailed October 31, 2002, stated that the feature of claim 22 is not found in the specification and the process of (1) "molding the food product" and (2) "portion of the mass flows to conform" and (3) "filling in a second desired shape that corresponds to the desired shape of the sugar wafer and which is sufficiently solid to retain the second desired shape" are not identically found in the specification. While pages 4-5 of the Office Action indicate that only number (2) is still an issue, Applicants are obligated to continue addressing all of these issues in view of the rejection being maintained exactly as before.

Initially, Applicants already removed the narrower word "molding" which word did not identically exist in the specification. Applicants previously amended claim 23 to recite the term providing to obviate the first part of this rejection, although this was not acknowledged in the final Office Action.

As to the other two aspects of claim 23 that are rejected, the Office Action is correct that this identical language is not explicitly present *ipsissimus verbis*. That strict requirement, however, is not the test for whether claim language is sufficiently enabled.

Before even reaching the alleged merits of this rejection, Applicants respectfully submit that the burden is on the Patent Office to demonstrate lack of possession of the invention in the claim terms. MPEP § 2163.04.<sup>1</sup> The Patent Office has failed to do so here, where examination of the application as a whole provides clear and unambiguous support for the specific words now recited in the claims. It is patently clear that a portion of the mass flows to conform to the sugar wafer when provided into the wafer, since the mass is added in molten (including semi-solid or semi-liquid) form. These states of matter all involve a flowable material, as is well understood by those of ordinary skill in the art, that then hardens or solidifies in place after it fills the sugar wafer. Hardened materials then retain their shape, particularly when they are disposed in a container like the presently recited shaped sugar wafer, as is also well understood by those of ordinary skill in the art.

The Office Action appears to overlook several other aspects in its improper lack of possession of the invention-type rejection. As is well known, mere rephrasing of a passage in a claim does not constitute new matter. Accordingly, a rewording of a passage where the same meaning remains intact is permissible. *In re Anderson*, 471 F.2d 1237, 176 USPQ 331 (CCPA 1973); *see* MPEP § 2163.07. Applicants have simply reworded features specifically disclosed in the specification in an expected and well-understood manner to those of ordinary skill in the art in an attempt to make claim 23 more clearly and distinctly recite the invention. No new meaning is intended by rewording the features of the application and making them into perfectly acceptable claim amendments, and this is permissible under Federal Circuit case law as well as the Patent Office's own practices and procedures such as stated in the MPEP.

Indeed, by disclosing in a patent application a material that inherently performs a function or has a property, operates according to a theory, or has an advantage, a patent application necessarily discloses that function, theory or advantage, even though it says nothing explicit concerning it. The application may later be properly amended to recite the function, theory or advantage without introducing prohibited new matter. *In re Reynolds*, 443 F.2d 384, 170 USPQ 94 (CCPA 1971); *In re Smythe*, 480 F. 2d 1376, 178 USPQ 279 (CCPA 1973); *see* MPEP § 2163.07(a). Moreover, there is no inconsistency between the

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<sup>1</sup> A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. *See, e.g., In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The Examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97.

amended claim language and the specification, such that this cannot be the basis of a proper rejection. MPEP § 2173.03.

Based on the proper interpretation of judicial decisions on this issue, as well as the MPEP, it is clear that the claim language is sufficiently supported by the specification and this rejection is not proper here. Specifically, it is clear that the term "molten" refers to a solid that has been reduced to a liquid state, such as by heat. If the material is partly reduced to a liquid state, it must then be a semi-solid or semi-liquid that contains some of each phase. If the material is completely reduced to a liquid state, it is a liquid. These are basic concepts well understood by those in the art of materials science and, moreover, this is a conventional definition of the term "molten." For example, a molten state can be one where the fat is completely melted or from a state where the fat is partially crystallized (acting as seed for crystal growth at 0.5-25% of the fat solid), where the fat is then sufficiently solidified.

Based on this well understood term "molten," it should be clear to those of ordinary skill in the art that a molten, or heated mass at least partly reduced to the liquid state, is flowable (Specification at page 5, lines 10-15) (Couzens Declaration, ¶ 6). Flowability is a defining characteristic of conventional materials in the liquid state. When a flowable mass is placed into a container, such as a shaped sugar wafer, some of the flowable mass (*i.e.*, the molten confectionery mass) will inevitably flow to conform to the shape of the sugar wafer (*Id.*). Thus, the claim recitation that a "portion of the mass flows to conform to the shape of the sugar wafer" is inherently or explicitly supported as well as being supported in the spirit of the specification (*Id.*). Further, the only way that a mass can move is either by flowing or by movement of the entire mass as a solid block. Since the application clearly supports that the mass is molten and is deposited into the shaped sugar wafers (*See, e.g.*, Examples 1-3), at least a portion of the confectionery mass presently recited must be flowable.<sup>2</sup> This is readily understood by those of ordinary skill in the art, and is supported by original method claim 10, Examples 1-3, and the specification as a whole. As previously discussed, the burden is on the Patent Office to demonstrate lack of possession of the invention in the claim terms. MPEP § 2163.04.

The Office Action even states that Applicant has not demonstrated "that all molten material will flow to conform to a shape." Applicant need not do so. On the contrary, Applicants are not claiming all materials, but only substantially water-free confectionery

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<sup>2</sup> Surprisingly, the Office Action states on page 5 that "[i]f a liquid material is poured onto a flat shape, the material will not flow to conform to the shape. This is wrong and irrelevant. A flowable material will always flow by its very definition.

materials. Moreover, there is no need for such a demonstration--it will be well understood by those of ordinary skill in the art that all of the molten, substantially water-free confectionery mass materials of the present invention will flow over a period of time. Thus, this lack of empirical data regarding flow of "all molten materials" is not important to obviate this rejection, which Applicants respectfully submit has been overcome.

The other language of concern to the Patent Office is the "filling in a second desired shape that corresponds to the desired shape of the sugar wafer and which is sufficiently solid to retain the second desired shape." As previously discussed, the wafers are shaped (*See, e.g.*, Specification at page 3, line 7) and any molten material placed therein will inevitably flow to conform to that shape. The fact that the molten confectionery mass is then permitted to harden *in situ* is explicitly disclosed (*See, e.g.*, Specification on page 5, lines 11-15). The fact that the "dome shape" disclosed in each of the three (3) examples is clear explicit support in the specification that the confectionery material of the invention is "sufficiently solid to retain the second desired shape" (Couzens Declaration, ¶ 6). Again, the burden is on the Patent Office to demonstrate lack of possession of the invention in the claim terms, particularly since the specification provides--at a minimum--clear inherent and/or inevitable disclosure of the features recited in claim 23. MPEP § 2163.04.

Claim 22 was rejected because the exact language "solid under ambient temperature" is not present in the specification. Indeed, the Office Action goes so far as to mistakenly state that "[t]he fact that the specification does not disclose any temperature is a [sic] clear evidence that the limitation is not supported by the original disclosure." Again, exact appearance of words *ipsissimus verbis* in the specification is not the test. Nonetheless, support for this claim language exists in the language "filling the sugar wafer with . . . molten, semi-liquid or semi-solid mass, and allowing the filling to harden." (Specification on page 5, lines 11-15). Applicants concede that no special temperature is disclosed in connection with this hardening of the filling, and thus, the conventional understanding--particularly to those of ordinary skill in the art in view of the specification--is that this hardening can and would result under ambient temperature. Applicants have therefore recited that the mass is solid under ambient temperature, and respectfully submit that it is well supported by the specification.<sup>3</sup>

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<sup>3</sup> If the Patent Office prefers that the Applicants use the term "hard under ambient temperature," which is more explicitly supported in the specification, the Examiner is expressly authorized to make such an amendment. The term "hard," however, seems to be somewhat indefinite and Applicants believe that "solid" better complies with statutory requirements.

Applicants are not required by Section 112, first paragraph, to explicitly and expressly describe every single possible detail about an invention in an application. Rather, only the essential details of an invention must be described, and the remainder that are understood by those of ordinary skill in the art can be omitted as surplusage so that well understood concepts and details can be omitted to avoid having each application read as a textbook. Indeed, the Patent Office is again attempting to make this preference for shorter applications into law--by discouraging lengthy specifications through additional filing fees. Those details that are understood by those of ordinary skill in the art need not be expressly discussed or detailed in an application, which is the situation here with "ambient temperature" being understood. Interestingly, the Office Action alleges that various features missing from the cited prior art are all so routine and obvious, yet the Office Action at the same time continues to allege that one of ordinary skill in the art would fail to understand that *ambient temperature* should be used since it is not explicitly disclosed. This is, at the very least, illogical.

Further, the specification contains three (3) examples, each of which indicates the filling hardens sufficiently to retain a desired dome shape after the sugar wafer is filled therewith. Given that no specific temperature is taught in these examples, those of ordinary skill in the art would have understood-- in the absence of further information--that the specification means that this hardening occurred under ambient temperature. It is disingenuous to allege that this is not even inherently present in the specification.

The Office Action states, presumably with respect to claim 22, that "[a]pplicant has not shown that the confectionery material *only* hardens under ambient temperature" (Office Action at page 5, emphasis added). This is an unusual statement, since Applicants need not demonstrate whether the invention can or cannot work at any/every given temperature in response to this type of rejection. Indeed, many of the materials in the present application will harden at other temperatures, as well. But Applicants need only demonstrate possession of the *claimed* invention. Because other conditions are not recited, there is no need to prove possession of such unclaimed features. Since the claim is commensurate in scope with the ambient conditions inherently and inevitably disclosed in the specification (*See also* Couzens Declaration, ¶ 6), Applicants are believed to have demonstrated possession of the claimed invention sufficiently to obviate the rejection, or at least to shift the burden of maintaining this rejection to the Examiner. MPEP § 2163.04.

In view of the above, Applicants respectfully request that the features of claims 22-23 be fully considered, as they help render claims 22-23 separately patentable from

the other independent claims. For these reasons, the rejection under 35 U.S.C. § 112, first paragraph, has been obviated and should be reconsidered and withdrawn.

Claims 2 and 11 were rejected under 35 U.S.C. § 112, first paragraph, for lack of possession of the invention, and claim 2 was rejected under 35 U.S.C. § 112, second paragraph, each on page 2 of the Office Action. Initially, based on the claim language of concern in the Office Action, these rejections appear to relate to claim 3 since claim 2 was previously canceled. Applicants address these rejections with respect to claim 3 in lieu of claim 2. Claim 3 has now been amended to correct an obvious clerical error. Claim 3 now recites the filling rather than the sugar wafer, which more clearly and distinctly recites the disclosed and claimed invention. Also, the language of claim 11 is inherently or explicitly present in the specification as previously discussed with respect to claims 22-23 (Couzens Declaration, ¶ 6). Thus, Applicants respectfully submit that these rejections under 35 U.S.C. § 112, first and second paragraphs, have been obviated and should be reconsidered and withdrawn.

Claims 1 and 3-21 were rejected under 35 U.S.C. § 103 (a) as being obvious over WO 00/13512 to Conti et al. ("Conti") on pages 3-4 of the Office Action. Applicants respectfully traverse. The Office Action states that Conti teaches shaped sugar wafers with confectionery materials such as chocolates or other fatty material such as fat-based cream, and that a moisture barrier of chocolate or a substitute may be used between the sugar wafer and other confectionery material. It is also stated that the confectionery material preferably has a low water activity such as a fat-based cream including yogurt. The Office Action concedes that Conti does not disclose the product size, hardening, or the inclusion of edible inclusions.

Conti clearly does not disclose or suggest several recited features, as acknowledged in the Office Action. Indeed, it specifically teaches away from several recited features. For example, yogurt--even as part of a fat-based cream--is well known to contain water content, even with a 0.3 water activity, while the claims recite a substantially water-free material. Also, Conti states that chocolate can be used as a filling, but this does not teach a substantially water-free confectionery mass, as presently recited (Couzens Declaration, ¶¶ 8-9). Chocolate is typically understood to be in bar, chunk, or piece form in commercial products, rather than a mass thereof. Conti fails to teach a mass of chocolate, for example. As a whole, Conti does not teach substantially water-free confectionery materials in a mass, as presently recited (Couzens Declaration, ¶¶ 8-9).

Also, Conti acknowledges the problem of using conventional water-based confectionery fillings by stating that it is preferably to minimize moisture migration problems. Conti teaches the possible use of a moisture barrier between the sugar wafer and its confectionery fillings to solve this problem, while the present invention recites a different solution--substantially water-free confectionery materials, which avoid the problems in the first instance that can occur using water-containing materials (Couzens Declaration, ¶¶ 8-9). While the Office Action correctly points out that Conti does teach that moisture barriers are optional, this simply demonstrates another of Applicants' points--that Conti is actually teaching to use any generic filling material but provides no specific teaching to use the presently recited substantially water-free confectionery materials to provide the benefits of having a cone act as a handle to keep a user's hands clean during eating of the product and to combine the pleasure and fun of eating an ice cream cone with the indulgence of a fat-based confection (Couzens Declaration, ¶¶ 8-9). Nothing in Conti teaches or motivates one of ordinary skill in the art to prepare the specific combination of components presently recited.

The claims recite that the mass has solidified or hardened in the sugar wafer, while Conti clearly discloses fat-based creams including yogurt, which are not understood by those of ordinary skill in the art to solidify or harden after they are placed in a sugar wafer. The Office Action states that the fluidity or flowability of a fat-based cream depends on the type of cream, and that those used in sandwich cookies or wafer cookies are not fluid. This is entirely correct, which highlights the patentable combination that Applicants have surprisingly and unexpectedly invented and claim herein. Applicants are claiming a flowable mass of substantially water-free confectionery material, which is completely distinct from the non-flowable materials the Examiner would expect to obtain from sandwich cookies or wafer cookies. Also, claim 1 now recites that the substantially water-free confectionery mass includes chocolate and non-lauric vegetable fat. At best, Conti discloses chocolate, however, this is not taught to be in combination with a vegetable fat, much less a non-lauric vegetable fat, as presently recited. Nothing in Conti suggests using a substantially water-free confectionery mass including chocolate and non-lauric vegetable fat in a shaped sugar wafer that flows then solidifies in the wafer as presently recited (Couzens Declaration, ¶ 10).

Indeed, it would have been expected that Conti's materials would remain fluid/flowable or that would never have even been fluid/flowable, as pointed out by the Examiner. Thus, Conti fails to teach that its different (*i.e.*, not substantially water-free) confectionery mass has solidified in the sugar wafer. It simply fails to teach filling materials that flow and then solidify in the wafer, as presently recited (Couzens Declaration, ¶ 11). The

solidifying aspect of the claimed invention is a surprising and unexpected benefit that elegantly facilitates processing. Importantly, it can then avoid melting in hot weather or during prolonged handling as is typical with ice cream products (*See Specification*, page 2, lines 17-18). Thus, the claimed invention has surprising and unexpected benefits compared to conventional fillings containing water or that do not flow and then harden in the wafer.

The Patent Office alleges the filling materials of Conti could be allowed to harden if such a taste and/or texture were desired, however, this is no more than a hindsight rejection (Couzens Declaration, ¶ 11). The different materials are not used herein to simply obtain a different taste and/or texture. Indeed, they are used to obtain a food product that has the advantages of frozen ice confectioneries without the disadvantages (*Id.*). For example, the present invention can look and feel like an ice cream cone, and can have a filling that is sinfully delicious, but has the enormous benefit that it will not melt like a frozen ice confection. This is an enormous advantage, and one having long-felt need in the art. Also, one of ordinary skill in the art would not have been motivated to provide a product that has the advantages of an ice cream cone but with the benefits of a fat-based confectionery therein based on the teachings of Conti, which is at best directed to providing a sugar wafer batter that provides additional flexibility in processing under ambient conditions after baking (Couzens Declaration, ¶¶ 8-10).

Moreover, the selection of completely different materials having different properties to solve a problem in a different way cannot be obvious--it is the *essence* of patentability. The Office Action alleges that the following claimed features are simply an obvious matter of choice, taste, or the like: (1) using a combination of chocolate with other fat depending on the taste desired; (2) obvious to add varying amounts of that fat depending on the content desired; (3) selecting materials that can be made molten or solid by changing the temperature; (4) selecting a state of filling material depending on the taste and flavor desired; (5) to make a product of any size; (6) to include inclusions to give extra taste and flavor; (7) adjusting the viscosity and temperature of filling the material into the wafer; (8) the amount of filling material; (9) the shape of the wafer; (10) the shape of the filling material. For example, the Office Action states that it would have been obvious to provide the claimed dome shape (feature (10)) to give the look of ice cream to enhance the novelty of the product since Conti discloses cone-shaped wafers and these are associated with ice cream. Absolutely nothing in Conti motivates one of ordinary skill in the art to adapt Conti's chocolate or cream-based filling containing yogurt into a product that looks like an ice cream cone (Couzens Declaration, ¶ 10). And even then Conti would only motivate a product with

a different filling from the substantially water-free confectionery mass presently recited. Indeed, the Office Action appears to acknowledge again the novelty of the claimed product when referring to the domed feature that would further enhance that novelty and non-obviousness compared to the cited prior art.

For the sake of argument, Applicants will agree for a moment that any of these ten allegedly routine changes might be obvious in view of Conti. But that is an improper test. The present application recites **combinations** of these various features, which Conti even more clearly fails to teach. Even if a single feature were obvious in view of Conti, which Applicants disagree with in respect to most of these features, Conti fails to motivate one of ordinary skill in the art to combine several of these features, as presently recited (Couzens Declaration, ¶¶ 10, 12). It cannot be obvious to optimize, or allege as routine, every single feature of a claimed combination that is not present in the prior art, or the Patent Office would virtually cease to exist. Applicants do not believe that Examiners are permitted to substitute bald assertions or allegations as a substitute for proper examination that shows a disclosure in the prior art itself, or a motivation and reasonable expectation of success in making some modification to that prior art. Imagine this line of thought: a telephone is obvious because it is obvious from a telegraph that communication is desirable over distances, and because it's simply a matter of changing the telegraph apparatus at each end to use a microphone and speaker to receive and transmit the sounds of speech instead of electronic impulses alone. Even if each change alone was obvious, especially in hindsight, the combination as a whole should still be patentable.

In sum, Conti fails to disclose or even suggest at least: (1) a substantially water-free confectionery mass; (2) materials that solidify or harden; and (3) a combination of chocolate and non-lauric vegetable fat, in addition to various other differences discussed herein and recited in the claims. In fact, Conti has explicit teachings away from the first two of these recited features, and simply fails to teach the specific materials in the third point. As such, no *prima facie* case of obviousness exists in the cited reference, and none has been stated on the record (Couzens Declaration, ¶ 12).

Moreover, claims 1, 3-9, 18-20, and 22 recite a food product and claims 10-17, 21, and 23 recite a process for preparing a food product. Although the Examiner acknowledged the difference between the two types of claims during the Interview of April 24, 2002, when it was indicated that the amendment clarifying the process claims would probably distinguish over the prior art pending further search, the Office Action now alleges that Conti teaches the methods presently recited. With all due respect, the rejection fails to

address independent claim 10 other than to concede that Conti fails to disclose a step of hardening a filling material (Office Action at page 3) (Couzens Declaration, ¶ 11). In addition, however, Conti fails to teach introducing a substantially water-free fat-based confectionery in a molten mass, as presently recited in claim 10 (Couzens Declaration, ¶¶ 11-12). This is an important aspect of the process of preparing the present product, and it is in no way obvious. Nothing in Conti teaches that a molten mass could or should be used, and Conti fails to even motivate one of ordinary skill in the art to attempt such a process (Couzens Declaration, ¶¶ 10-12). Conti, of course, is directed to the completely different problem of improving sugar wafer batters and processing of the wafers (Couzens Declaration, ¶ 7).

Further, Conti also fails to teach that the cone acts as a handle to keep a user's hands clean during eating of the product, as presently recited (Couzens Declaration, ¶¶ 9-10). Although Conti teaches various wafer shapes, claim 11 recites the benefits of a specific cone shape. Indeed, Conti's tubular wafers and flat sheets would result in its filling falling or dropping out the bottom of the tube during consumption and flat sheets would let filling fall off the edges, while the presently recited cone avoids such problems. Also, Conti fails to teach a product that combines the pleasure and fun of eating an ice cream cone with the indulgence of a fat-based confection, as presently recited in claim 11 (*Id.*). Indeed, Conti fails to teach making a fat-based confection (*i.e.*, under ambient conditions) that provides the benefits of appearing to be an ice cream cone, as presently recited in claim 11. These differences and others in the method claims are not addressed in the cited prior art or in the Office Action (Couzens Declaration, ¶¶ 11-12). To the extent these deficiencies in Conti are alleged in the Office Action to be routine variation, there is no motivation in Conti to make such variations--particularly not all the different features presently recited in claim 10, claim 11, or other method claims dependent therefrom (*Id.*).

Moreover, several claims have other or additional separately patentable features. For example, as to claim 23, the fat-based cream containing yogurt of Conti would not retain the desired shape in the wafer at ambient temperature since it is still flowable, *i.e.*, it has not hardened. Or, if this were a hardened material to begin with, Conti fails to teach that it was at any point flowable. Thus, Conti does not teach the importance of a material that flows to conform but then solidifies to retain the second desired shape under ambient temperature, as presently recited (Couzens Declaration, ¶ 11). Claim 5 was recites a combination that includes both chocolate and vegetable fat in particular amounts. Conti completely fails to teach combinations of fillings, much less a chocolate and vegetable fat in

certain amounts that provides a substantially water-free confectionery mass (Couzens Declaration, ¶¶ 8, 10, and 12). Indeed, Conti *teaches away* from substantially water-free materials by disclosing ice creams, and *teaches away* from flowable masses by teaching chocolate. The fat based creams either contain water or they do not, such that they are either non-flowable or they are not substantially water-free confectionery masses. Thus, claim 5 should be allowable if rewritten in independent form. Also, the dome shape of claims 17 and 20 is not disclosed or even suggested--and in any event simply *cannot* be obtained using a yogurt or cream-based material containing yogurt that does not solidify, since it will not retain the shape provided, such as a dome (Couzens Declaration, ¶ 9). Again, if this material is solid to begin with, it would be difficult to shape it into a dome-like shape even if such a motivation existed in the cited prior art of record. This is another of the surprising and unexpected benefits of the present invention, which provides a food product having the appearance of an ice cream cone or other frozen confection without the disadvantage of rapid melting in hot weather or in a consumer's hands (Couzens Declaration, ¶ 12).

Conti clearly fails to teach various features and benefits of the claimed product or process, and Federal Circuit case law requires that a motivation to modify the prior art must be found in the prior art itself rather than in an unsupported determination that the motivation exists. *In re Lee*, 277 F.3d 1338, 61 U.S.P.Q.2d 1430 (Fed. Cir., 2002) (finding that the Board of Patent Appeals and Interferences improperly relied upon common knowledge and common sense of person of ordinary skill in art to find invention of patent application obvious over combination of two prior art references, since factual question of motivation to select and combine references could not be resolved on subjective belief and unknown authority). For at least these reasons, the rejection of claims 1 and 3-21 under 35 U.S.C. § 103(a) should be reconsidered and withdrawn, since no *prima facie* case of obviousness has been stated on the record.

Accordingly, the entire application is now in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree with the Applicants' position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the application.

Respectfully submitted,

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